

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AT&T CORP.,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION No. 99-4975
)	
PUBLIC SERVICE ENTERPRISES OF,)	
PENNSYLVANIA, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM

Padova, J. February , 2000

This matter arises on Defendants' Motion to Strike, filed December 1, 1999. This motion is fully briefed and ready for decision. For the reasons that follow, the Court will deny Defendants' Motion to Strike.

I. BACKGROUND

AT&T provides telecommunications services, including long-distance telephone services. From 1991 to 1996, Public Service Enterprises of Pennsylvania, Inc. ("PSE") purchased long-distance services from AT&T. In exchange for committing to purchase large volumes of such services, PSE obtained steep discounts from AT&T. A series of disputes arose between AT&T and PSE, and in July 1996, they agreed to settle these disputes by means of an arbitration proceeding. These disputes included claims by AT&T that PSE failed to satisfy the volume commitments it undertook in exchange for the discount. In August 1998, the arbitrators awarded \$26 million to AT&T. The arbitration award was confirmed by the U.S. District Court for the Southern District of New York on September 8, 1999 ("Judgment").

AT&T, however, has not collected this Judgment. In the instant Complaint, AT&T alleges that the individual defendants¹ diverted all PSE revenues into another corporation that they owned and controlled, Enterprise Telcom Services, Inc. (“ETS”). PSE allegedly transferred the telecommunication services it received from AT&T to ETS “without fair or reasonably equivalent consideration.” [Complaint ¶26]. AT&T alleges that this corporate structure enabled the individual defendants to convey to ETS and themselves the benefits of the volume commitments PSE made to AT&T without the corresponding liabilities.

In addition, AT&T alleges that the individual defendants stripped real estate assets from PSE after it entered into the resale business with AT&T. AT&T alleges that the individual defendants transferred real estate assets or the proceeds of these assets to themselves, their families, or other entities under their ownership or control. [Complaint ¶¶28-29]. AT&T alleges that these transfers were “without fair consideration,” and left PSE “grossly undercapitalized for the business in which it was engaged.” [Complaint ¶¶28-30]. PSE, however, continued to purchase long distance services from AT&T, and allegedly increased its commitments to AT&T through June 1994. [Complaint ¶¶32-34].

In July 1994, ETS sold its assets to a new limited partnership, New Enterprises Wholesale Services, L.P. (“NEWS”). Like ETS, NEWS allegedly purchased the long distances services from PSE “without fair or reasonably equivalent consideration.” [Complaint ¶37]. AT&T alleges that the sale of ETS' assets to NEWS, and PSE's continued transfer of services to NEWS caused the

¹ AT&T names four individual defendants: William B. Sordoni, Charles E. Parente, Patrick A. Bello and Frank G. Scardino. AT&T alleges that in 1991, PSE was a wholly-owned subsidiary of Sordoni Enterprises, which in turn was owned by a holding company in which Defendants Sordoni, Parente, and two brothers of Sordoni are the sole shareholders. AT&T alleges that Bello and Scardino “held beneficial interests in PSE from at least the end of 1991 forward.” [Complaint ¶15]. In addition, Sordoni, Parente and Scardino were officers of PSE, and Sordoni and Parente were directors of PSE. [Complaint ¶7].

individual defendants to receive approximately \$13 million “which in equity belongs to PSE.” [Complaint ¶38].

As a result of these alleged actions, AT&T claims that PSE has insufficient assets to pay the Judgment. On October 5, 1999, AT&T registered the judgment in this Court. AT&T subsequently filed this action on October 7, 1999. AT&T brings five counts against Defendants. In Count I, AT&T seeks to enforce the Judgment against PSE by means of assigning PSE's right to an action against individual defendants for breach of fiduciary duty to AT&T. AT&T then brings Count II, as the assignee of PSE pursuant to Fed. R. Civ. P. 18(b), for breach of fiduciary duty against the individual defendants. In Counts III and IV, AT&T brings fraudulent conveyance claims against the individual defendants. Finally, in Count V, AT&T seeks to hold the individual defendants personally liable for the Judgment based on fraud, or piercing the corporate veil.

By Order dated January 19, 2000, the Court consolidated this action with Cause No. 99-6099 (“PSE Complaint”).

II. MOTION TO STRIKE THE COMPLAINT

Rule 12(f) of the Federal Rules of Civil Procedure allows a Court to strike “from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” Fed.R. Civ. P. 12(f). “All well-pleaded facts are taken as admitted on a motion to strike but conclusions of law or of fact do not have to be treated in that fashion.” United States v. Kramer, 757 F.Supp. 397, 409 (D.N.J. 1991)(quoting 5A Wright & Miller, Federal Practice and Procedure: Civil 2d (Federal Practice) § 1380, ¶. 655-656 (1990)).

“Matter outside the pleadings normally is not considered on a Rule 12(f) motion.” Id. Nevertheless, because PSE has attached the Arbitration Agreement to its Complaint in Cause No.

99CV6099, and because the two actions are now consolidated, the Court will consider the Arbitration Agreement's confidentiality provision for the purposes of this motion.

Motions to strike, however, are viewed with disfavor and are infrequently granted. King v. M.R. Brown, Inc., 911 F.Supp. 161, 169 (E.D. Pa.1995). The Court will deny a motion to strike if the allegation is sufficient as a matter of law or if it fairly presents a question of law or fact which the Court ought to hear. See United States v. Union Gas Co., 743 F.Supp. 1144, 1150 (E.D. Pa. 1990).

PSE moves the Court to strike the Complaint in its entirety because it is based on confidential information that AT&T agreed not to use outside the arbitration proceedings. [Arbitration Agreement § 9.1]. Thus, PSE contends that because AT&T “learned” about the individual defendants conduct during the course of the arbitration proceeding, evidence regarding that conduct is barred by Fed. R. Evid. 408. The Court disagrees.

AT&T does not dispute that it learned about the individual defendants' conduct “[d]uring the course of the arbitration proceeding.” [Complaint ¶¶12, 24]. Rule 408, however, provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

Fed.R. Evid. 408 (emphasis added). The Court cannot conclude that AT&T will be unable to prove at trial that the individual defendants undertook the actions described in the Complaint without resort to inadmissible evidence². Accordingly, the Court will deny PSE's Motion to Strike.

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The Court expresses no opinion on whether PSE effectively waived its right to confidentiality under the Arbitration Agreement by placing the transcript of the arbitration hearing in the record.

An appropriate Order follows.

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CIVIL ACTION No. 99-4975

ORDER

AND NOW, this day of February, 2000, upon consideration of Defendant's Motion to Strike (docket #3-1) and Plaintiff's Response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

John R. Padova